# RECORD, CASE No. 14,439.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~995~~. 625 364

THE KENTUCKY CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

*vs.*

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED DECEMBER 12, 1890.

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1 COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the court of appeals of Kentucky, at the capitol, in the capital, the city of Frankfort, on the 13th day of December, A. D. 1888—Chief Justice Joseph H. Lewis and Associate Judges W. H. Holt, Caswell Bennett, and W. S. Pryor, sitting.

KENTUCKY CENTRAL RAILROAD CO., Appellant, *vs.* COMMONWEALTH OF KENTUCKY, Appellee. } Appeal from Franklin Circuit Court.

Be it remembered that heretofore, to wit, on the first day of September, 1888, the appellant, The Kentucky Central Railroad Company, by its attorneys, Hallam & Myers, filed in the office of the clerk of the court of appeals of Kentucky a transcript in words and figures following, to wit:

Franklin Circuit Court.

Proceedings before the Hon. Warren Montford, judge of the court aforesaid, at the court-house, in the city of Frankfort, on the 20th day of August, 1888.

Be it remembered that on the 5th day of October, 1885, the
2 following petition was filed in the clerk's office of the court aforesaid:

*Petition, Case No.* 1.

Franklin Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff, *vs.* THE KENTUCKY CENTRAL RAILROAD COMPANY, Defendant. } Petition.

The pl'ff states that the def't is a railroad company and corporation and is and was during the year 1884 the owner and operating a line of railway, lying in the State of Kentucky, known as the Kentucky Central railroad, and the same constructed under and chartered and incorporated by an act of the General Assembly of the Commonwealth of Kentucky.

Pl'ff states the def't, for the purpose of assessment and taxation for the year 1884, as required by law, reported to the auditor of public accounts for the State of Ky. the total length of said railroad owned and operated by them as aforesaid and the value thereof per mile, and also reported their engines, cars, depot grounds, improvements, and other real estate and the value thereof; the total valuation of said road, including sidings and other taxable prop-
3 erty as reported, was — dollars. Pl'ff states that after said report and valuation was made to the auditor of public accounts by the def't the board of railroad commissioners, who by law

constitute a board of equalization to value and assess the railroad property of the State, after being sworn as required by law, met on the 1st day of September, 1884, at the office of the auditor of public accounts, in Frankfort, Ky., and with a majority of said board present, constituting a quorum, the auditor placed before them the valuation returns and reports made to him by def't.

Pl'ff states that said board of equalization continued its sittings from day to day, as provided by law, of which the def't had due notice, and pl'ff avers that the def't did appear before said board, by their officers, agent, and attorneys, and presented such facts, figures, and assessment for taxation of *its* said property as they saw proper.

Pl'ff states that said board, after a full hearing by def't, by her officers, agents, and attorney, and a full consideration of said returns, reports, information, and argument before them, valued and
4 assessed for taxation, for the year 1884, the def't's line of railroad lying in this State, the same reported by def't to the auditor, together with its rolling stock, engines, cars, depot grounds, improvements, and other real estate, at $3,008,580; and on the 1st day of October, 1884, returned and filed with the auditor of public accounts the record of said assessment and valuation, signed and attested as provided by law, a certified copy of which, marked —, is filed as a part hereof.

This rep't not found among the papers.

Pl'ff states that the auditor of public accounts, before the 10th day of October, 1884, duly notified the def't of the amount of their assessment for taxation, and, as required by law, opened an account with def't, charging them with the sum of $15,795.04, the amount of tax due the State of Ky. upon said assessment and valuation of def'ts' property for the year 1884, 52½ cents on the $100, which is the rate of taxation prescribed by law on such property and all other real estate of the Commonwealth. A certified copy of said account is filed herewith as part hereof, marked "A."

Pl'ff states that the def'ts are indebted to her in the sum of $15,795.04, taxes due as aforesaid for the year 1884, with
5 interest from the 10th day of October, 1884, no part of which has been paid, except the sum of $10,405.65, paid Feb'y 12th, 1885. Wherefore pl'ff prays judgment against the def't for said debt and interest from Oct. 10th, 1884, and for her costs and all proper relief.

P. W. HARDIN, *Att'y Gen'l.*

*Auditor's Account "A," Filed with Petition.*

FRANKFORT, KY., *Jan. 23rd*, 1885.

The Kentucky Central Railroad Company Dr. to the State of Kentucky.

| | |
|---|---|
| To taxes assessed by the board of railroad commissioners for the year 1884, $3,008,580 @ 52½c. on each $100 | $15,795 04 |
| By payment Jan. 12th, 1885 | 10,405 65 |
| Balance | $5,389 39 |

*Note by Clerk.*

On the 5th day of October, 1885, a summons was issued on the foregoing petition against the def't, which has never been returned to the clerk's office.

Be it remembered that on the 1st day of May, 1888, the following petition was filed in the clerk's office of the court aforesaid :

*Petition, Case No.* 2.

Franklin Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, Defendant. } Petition.

6 The plaintiff, The Commonwealth of Kentucky, states that the defendant, The Kentucky Central Railroad Company, is a railroad company and corporation, and is and was during the year 1885 the owner of and operating a line of railway lying in the State of Kentucky, and the same was constructed under, chartered, and incorporated by an act of the General Assembly of the Commonwealth of Ky.

Plaintiff states that the defendant-, for the purpose of taxation and assessment for the year 1885, as required by law, reported to the auditor of public accounts of the State of Ky. the total length of said railroad owned and operated by them as aforesaid and the value thereof per mile, and also reported their engines, cars, depot grounds, improvements, and other real estate and the value thereof. The total valuation of said road, including sidings and other taxable property, as reported, was — dollars.

Plaintiff states that after said report and valuation was made to the auditor of public accounts by the defendant the board of railroad commissioners, who by law constitute a board of assess-
7 ment and equalization to value and assess the railroad property of the State, *who*, being sworn as required by law, met on the 1st day of Sept., 1885, at the office of the auditor of public accounts, in Frankfort, Ky., and with a majority of said board present, constituting a quorum, the auditor placed before them the reports, returns, and valuations made to him by the def't.

Pl'ff states that said board of equalization and assessment continued its sittings from day to day, as provided by law, of which the def't had due notice, and pl'ff avers that the def't did appear before said board by their officers, agents, and attorneys, and presented such facts, figures, and arguments in regard to the valuation and assessment of said property for taxation as they saw proper.

Pl'ff states that after a full hearing by def't, by its officers and attorneys, and after a full consideration of said returns, reports, and information before them, valued and assessed for taxation, for the

year 1885, the def't's line of road aforesaid, together with its rolling stock, engines, cars, depot grounds, improvements, and other real estate, at the sum of 4,204,580, and on the 10th day of
8 October, 1885, returned and filed with the auditor of public accounts the record of said assessment and valuation, signed and attested as provided by law, a certified copy of which, marked "A," is filed herewith as part hereof.

This report, marked "A," not found among papers.

Pl'ff states that the auditor of public accounts, before the 10th day of October, 1885, duly notified the def't- of the amount of their assessment for taxation, and, as required by law, opened an account with def't-, charging them with the sum of $22,074.04, the tax due the State of Kentucky on said assessment and valuation of def'ts' property for the year 1885, at 52½ cents on each $100, which was the rate of taxation prescribed by law on such property and all other real estate in the Commonwealth of Ky. A certified copy of said account, marked "B," is filed herewith as part hereof.

Pl'ff states that the def't is indebted to her in the sum of $22,074.04, taxes due as aforesaid for the year 1885, with interest at — % from the 10th day of October, 1885. No part of said debt has been paid.

Wherefore plaintiff prays judgment against the def't for said debt, and interest from October 10th, 1885, and for her costs and all proper relief.

9 Paragraph 2. Plaintiff further states that the def't is and was during the year 1886 a railroad company incorporated under the laws of this State, and during that year owned and operated a line of railway in the State of Ky.

Plaintiff states that def't-, for the purpose of assessment and taxation for the year 1886, as required by law, reported to the auditor of public accounts the length of road owned and operated by them and the value thereof per mile, and also reported their engines, cars, depot grounds, improvements, and all other real estate and the value thereof.

Plaintiff states, after said report and valuation was made the rail- commission, who by law constitute a board of assessment and equalization to assess and value the railroad property of the State for taxation, after being sworn as required by law, met at the office of the auditor of public accounts, in Frankfort, Ky., on the 1st day of Sept., 1886, and with a majority present, constituting a quorum, the auditor placed before them the reports, returns, and valuations made to him by def't; that said board continued its sitting from day to day, as provided by law, of which the defendant had due
10 notice, with right to appear before them and be heard. Plaintiff states that after a full hearing of defendant, by attorney and officers, and a full consideration of said returns and reports, said board valued and assessed for taxation, for the year 1886, the defendant's line of road, together with rolling stock, depot grounds, and other property, at the sum of $4,295,070, and on the — day of

This record, marked "C," not found among the papers.

Sept., 1886, returned and filed with the auditor of public accounts the record of said assessment and equalization, signed and attested as provided by law, a certified copy of which, marked "C," is filed herewith.

Plaintiff states that before the 10th day of October, 1886, the auditor duly notified the defendant- of the amount of said assessment for taxation, and, as required by law, opened an account with defendant-, charging them with the sum of $21,904.85, the tax due plaintiff on def'ts' property for the year 1886, at 51 cents on each one hundred dollars, which was the rate of taxation prescribed by law on such property. A certified copy of said account, marked "B," is filed herewith, filed as part hereof. Plaintiff states that the defendant is indebted to her in the sum of $21,904.85, taxes due as aforesaid for the year 1886, with interest from the 10th day
11 of October, 1886. No part of said debt has been paid. Wherefore plaintiff prays judgment against defendant for said debt and interest as aforesaid, and her cost and all proper relief.

P. W. HARDIN,
*Att'y General.*

*Note by Clerk.*

On the 1st day of May, 1888, a summons was issued on the foregoing petition against the def't, which has not been returned to the clerk's office.

The following reports by the railroad company to the auditor of public accounts and statements of account by the auditor are the only exhibits found among the papers in this cause:

*R. R. Co.'s Report to Auditor, Ending June 30th, 1885.*

Subject: Enclosing annual report for year ending June 30th, 1885.

Kentucky Central Railroad Co., office of general manager.

RICHMOND, VA., *Aug.* 28, 1885.

Hon. Fayette Hewitt, auditor of public accounts, Frankfort, Ky.

DEAR SIR: I herewith enclose annual returns of the Kentucky Central R. R. Co., the Maysville & Lexington R. R. Co., Northern division; the Maysville & Lexington R. R. Co., Southern division, and the Richmond branch of the Louisville & Nashville R.
12 R. Co. for the year ending June 30th, 1885, as required by the act of the legislature approved April 3rd, 1878, entitled "An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation and for taxing same."

For the Kentucky Central Railroad Co. I beg to say that it makes the return above referred to under protest to avoid litigation and the expense incident thereto. It denies that it comes under the provisions of said act, and claims exemptions under its charter from taxation.

Kindly refer to communications addressed to Honorable Howard Smith, auditor of State, under date July 19th, 1878, and August 26th, 1878, for our views on the subject.

Respectfully,

C. W. SMITH,
*Gen'l Manager.*

STATE OF VIRGINIA,
*County of Richmond,* } *ss:*

C. W. Smith, gen'l manager of the Kentucky Central railroad, being duly sworn, says that the annual returns of the Kentucky Central Railroad Co., the Maysville & Lexington R. R. Co., Northern division; the Maysville & Lexington R. R. Co., Southern division, and the Richmond branch of the Louisville and Nashville R. R. Co., leased by the Kentucky Central Railroad Co., attached hereto, are true and correct, according to the best of his knowledge and belief.

C. W. SMITH,
*Gen'l Manager.*

Subscribed and sworn to before me this 29th day of August, 1885.

C. E. WENFORD,
*Notary Public.*

*Annual Return of the Maysville and Lexington R. R. Co., Southern Division, to the Auditor of Public Accounts of the State of Kentucky.*

Length of road.

In cities:

| | | |
|---|---|---|
| Paris | .10 miles. | |
| Lexington | .80 " | |
| | | 0.90 miles. |

In incorporated towns, none.

In counties, outside of cities & incorporated towns:

| | | |
|---|---|---|
| Bourbon county | 10.90 " | |
| Fayette " | 7.37 " | |
| | | 18.27 " |
| Total | | 19.17 " |

Estimated value per mile, including engines & cars, $8,750.00.

*List of Depot Grounds and Improvement- and Other Real Estate.*

In cities:

| | |
|---|---|
| Paris: 1 lot & section-house | $500 00 |
| Lexington: 2 depots, engine-house, water-tank, & coal-shed | 5,000 |

In incorporated towns, none.

In counties, outside of cities & incorporated towns:

| | | | |
|---|---|---|---|
| Bourbon Co.: 1 section-house near Bryant's | | | $100 |
| Fayette Co.: 1 depot and store at Muir | $1,200 00 | | |
| 1 lot & sec.-house near Clinton pike | 100 00 | | |
| 1 do., Hutchinson | 50 00 | | |
| | | | $1,350 |

Respectfully,
(Signed) C. W. SMITH,
*Gen'l Manager.*

*Annual Return of the Maysville and Lexington R. R., Northern Division, to the Auditor of Public Accounts of the State of Kentucky.*

Length of road.

In cities:

| | | |
|---|---|---|
| Paris | .15 miles. | |
| Maysville | .57 " | |
| | | 0.72 miles. |

In incorporated towns:

| | | |
|---|---|---|
| Millersburg | .25 miles. | |
| Carlisle | .40 " | |
| | | 0.65 |

15 In counties, outside of cities & incorporated towns:

| | | |
|---|---|---|
| Bourbon county | 9.85 | |
| Nicholas " | 15.32 | |
| Fleming " | 9.00 | |
| Mason " | 13.81 | |
| | | 47.98 |
| Total | | 49.35 |

Estimated value per mile, including engines & cars, $8,750.00.

*List of Depot Grounds & Improvements & Other Real Estate.*

In cities:

| | | |
|---|---|---|
| Paris: 1 lot, with eng.-house | | $800 |
| Maysville: " " " | $1,000 | |
| Forward | 1,000 | $800 |
| Maysville (cont'd): 1 lot & depot | 1,000 | |
| " 1 lot used as a coal-yard | 150 | |
| | | 2,150 |
| | | $2,950 |

| | | | |
|---|---|---|---|
| In incorporated towns: | | | |
| Millersburg: 1 lot & depot | | 500 | |
| Water station | | 100 | |
| | | | 600 |
| Carlisle: Pass. depot | | 1,000 | |
| Fr't do. | | 2,000 | |
| | | | 3,000 |
| | | | $3,600 |
| In counties, outside of cities & incorporated towns: | | | |
| Bourbon Co., nothing. | | | |
| Nicholas " 1 lot & depot, Myers | | | 150 |
| Fleming " 1 " " Ewing | | $300 | |
| " " 1 " " Johnson | | 700 | |
| | | | $1,000 |
| Mason Co., nothing. | | | |
| | | | $1,150 |

Respectfully,

C. W. SMITH,
*Gen'l Manager.*

16 *Annual Report of the Kentucky Central R. R. Co. to the Auditor of Public Accounts of the State of Kentucky.*

Length of tracks.

| | | | |
|---|---|---|---|
| In cities: | | | |
| Covington | 1.00 | mile. | |
| Cynthiana | .72 | " | |
| Paris | .76 | " | |
| | | | 2.48 miles. |
| In incorporated towns: | | | |
| De Mossville | .24 | " | |
| Butler | .32 | " | |
| Boston | .28 | " | |
| Falmouth | .47 | " | |
| Berryville | .50 | " | |
| Winchester | 1.23 | " | |
| | | | 3.04 miles. |
| In counties (exclusive of above): | | | |
| Kenton Co. | 23.13 | " | |
| Pendleton Co. | 23.80 | " | |
| Harrison " | 19.91 | " | |
| Bourbon " | 16.65 | " | |
| Clark " | 15.70 | " | |
| Madison " | 25.20 | " | |
| Rock Castle " | 16.74 | " | |
| | | | 141.13 miles. |
| Total | | | 146.65 " |

The estimated value per mile, including engines & cars, $13,000.

| | | |
|---|---|---|
| In city of Covington: | | |
| 1 lot on Washington St., bet. 8th & Pike, with two frame depot buildings | $6,000 | |
| 1 square, Washington & Madison & 13 & 14th Sts., with brick round-house and repair shop, black. shop, & machine shop | 18,000 | |
| 2 half squares, west side of Washington St., 12th to 14 St., and an irregular piece south of 17 14th St., with two car-repair shops | 6,000 | |
| 1 vacant lot S. W. cor. 8th & Washington Sts. | 1,500 | |
| 1 " " " " Washington & Saratoga Sts. | 1,500 | |
| 1 " " " " " & 10th St-. | 500 | |
| 1 lot, Washington & 10th Sts., used for coal platform | 1,000 | |
| 1 " west side Washington & 10th Sts. | 1,000 | |
| 1 " east " " St. & north of 13th | 1,000 | |
| Vacant lots S. E. cor. Washington & 14th St-. | 1,000 | |
| 10 acres of ground, with small section-house | 5,000 | |
| 2 lots west of Washington bet. Batchelor & 11th St-. | 900 | |
| Residence cor. 12th and Washington St-., with two lots on east side of Washington Sts., S. of 12th St. | 5,500 | |
| | | $48,900 |
| In city of Cynthiana: | | |
| 1 lot, with two frame depots & section-house | 2,000 | |
| 1 lot and frame house | 50 | |
| 1 " " building leased to express Co. | 150 | |
| | | 2,200 |
| Forward | | 51,100 |
| Am't bro't forward | | 51,100 |
| In city of Paris: | | |
| 3 lots, with freight depot, pump-house, & dwelling | $2,000 | |
| 1 " " passenger depot | 500 | |
| Coal w-arf and water-tank | 1,100 | |
| | | 3,600 |
| | | $54,700 |
| In incorporated towns: | | |
| De Mossville: 1 small frame house | | 20 |
| Butler: 3 acres ground, with depot & sec.-house | | 1,200 |
| Boston: 1 lot, with dwelling | | 150 |

| | | | |
|---|---|---|---|
| 18 | Falmouth: 1 lot, with depot, sec.-house, eng.-house, and turn-table | 1,200 | |
| | 1 lot, with house & water-tank | 500 | |
| | | | 1,700 |
| | Berryville: Stock-pens, depot grounds, & sec.-house | | 1,100 |
| | Winchester: ½ interest in fr't depot | 600 | |
| | ½ " " pass. " | 900 | |
| | section-house | 500 | |
| | dwelling | 2,000 | |
| | | | 4,000 |
| | | | $8,170 |

In counties outside of cities & incorporated towns:

| | | | |
|---|---|---|---|
| | Kenton Co.: Depot, Milldale | 200 | |
| | 1 lot & frame house, Bank Lick | 150 | |
| | 1 lot & frame house, De Coursey | 150 | |
| | 1 lot & sec.-house near Culbertson | 100 | |
| | Passenger depot, Locust | 200 | |
| | Forward | 800 | |
| | 1 lot & frame house near bridge No. 3 | 100 | |
| | Passenger depot, Grant | 400 | |
| | 1 lot & toll-house near Visalia | 100 | |
| | Depot, Visalia | 500 | |
| | 1 lot, with house & water-tank, Crusier's Creek | 400 | |
| | 1 lot & depot, Morning View | 500 | |
| | 1 " & sec.-house, Alexander | 50 | |
| | | | $2,850 |
| | Pendleton Co.: | | |
| | 1 lot & sec.-house near Catawba | 100 | |
| | 1 lot & sec.-house near Levingood | 100 | |
| 19 | $9\frac{2}{10}$ acres near Falmouth | 460 | |
| | | | 660 |
| | Harrison Co.: | | |
| | 1 lot, with depot, Boyd's | 500 | |
| | 1 " " tank, coal-shed, &c. | 350 | |
| | 2 sec.-houses, Boyd's | 350 | |
| | Quarry " | 300 | |
| | 2 lots & sec.-houses near Robinson | 200 | |
| | 1 lot & sec.-house near Poindexter | 100 | |
| | 1 " with house & water-tank near Keller's Bridge | 250 | |
| | 1 " & sec.-house near Lair | 100 | |
| | 1 " & sec. " " Townsend | 150 | |
| | | | 2,300 |
| | Bourbon Co.: | | |
| | 1 lot & frame depot, Shawhan | 350 | |
| | 1 " & sec.-house near " | 100 | |
| | Forward | $450 | $5,810 |

| | | |
|---|---|---|
| 2 frame houses on leased land, near Kiser's | 50 | |
| Depot at Cunningham | 500 | |
| " " Austerlitz | 500 | |
| 2 sec.-houses & tool-house, Austerlitz | 550 | |
| | | 2,050 |
| Clark county: | | |
| Depot & tank at Renwick | 1,000 | |
| " " sec.-house at Rankin's | 550 | |
| Section-house near Tunnel | 100 | |
| | | 1,650 |
| Madison Co.: | | |
| Depot at Boone | 800 | |
| Tank & pump-house at Shearer | 500 | |
| Section-house, Shearer | 100 | |
| Depot at Red House | 500 | |
| 2 sec. house- at Hord's Ford | 500 | |
| Tank & pump-house, Hord's Ford | 500 | |
| 20 Pass. depot, Berea | 700 | |
| Freight depot, " | 200 | |
| | | 3,800 |
| Rock Castle Co.: | | |
| Tank at Clear Creek | 500 | |
| | | 500 |
| | | $13,810 |

Respectfully,
(Signed) C. W. SMITH,
*Gen'l Manager.*

*Annual Returns of the Richmond Branch of the Louisville & Nashville R. R. Co., Leased by the Kentucky Central R. R., to the Auditor of Public Accounts of the State of Kentucky.*

Length of road.

In cities, none.

In incorporated towns:

| | | |
|---|---|---|
| Lancaster | .58 miles. | |
| Richmond | .46 " | |
| | | 1.04 miles. |
| In counties, outside of cities & incorporated towns: | | |
| Madison | 14.73 miles. | |
| Garrard | 13.42 " | |
| Lincoln | 4.61 " | |
| | | 32.76 miles. |
| Total | | 33.80 " |

Estimated value per mile, including eng. & cars ..... $8,750.

*List of Depot Grounds and Improvements and Other Real Estate.*

In cities, none.

In incorporated town-:

| | | | |
|---|---|---|---|
| Richmond: Passenger depot | | | $200 00 |
| 21 Amount bro't forward | $200 | | |
| Richmond: Freight depot | 250 | | |
| Engine-house | 300 | | |
| Section-house | 150 | | |
| | | $900 | |
| Lancaster: Passg. & fr't depot | | 500 | |
| | | | $1,400 |

In counties, outside of cities & incorporated towns:

| | | |
|---|---|---|
| Madison Co.: Depot & water sta., Silver Creek | 350 | |
| Section-house, Duncannon | 50 | |
| Depot, Argenta (Ft. Estile) | 100 | |
| | | 500 |
| Garrard Co.: Depot, Hyattsville | 150 | |
| 2 sec.-houses & tool-house, Lowell | 400 | |
| Depot & water sta., Paint Lick | 250 | |
| | | 700 |
| Lincoln Co.: Depot & sec.-house, Gilbert | 600 | |
| Engine-house, Rowland | 150 | |
| | | 750 |

Respectfully,
(Signed) C. W. SMITH,
*Gen'l Manager.*

Attest: FAYETTE HEWITT, *Auditor.*

Copy.

*R. R. Co. Report to Auditor, Ending June* 30, 1886.

Subject: Annual report for year ending June 30th, 1886.

Kentucky Central railroad.
H. E. Huntington, receiver; offices, Pike & Washington St.

OFFICE OF THE RECEIVER,
COVINGTON, KY., *Sept.* 24, 1886.

Gen'l Fayette Hewitt, State auditor, Frankfort, Ky.

22 DEAR SIR: I herewith enclose annual returns of the Kentucky Central railroad, the Maysville and Lexington railroad, Northern div.; the Maysville and Lexington railroad, Southern division, and the Richmond branch of the Louisville & Nashville Railroad Co., leased by the Kentucky Central railroad for the year ending June 30th, 1886, as required by the act of the legislature approved April 3rd, 1878, entitled An act to prescribe the mode of

ascertaining the value of the property of railroad companies for taxation and for taxing same.

Respectfully,

(Signed) H. E. HUNTINGTON, *Receiver.*

STATE OF KENTUCKY, *City of Covington,* } ss:

H. E. Huntington, receiver of the Kentucky Central railroad, duly sworn, says that the annual returns of the Kentucky Central railroad, the Maysville and Lexington railroad, Northern division; the Maysville and Lexington railroad, Southern division, and the Richmond branch of the Louisville and Nashville railroad, leased by the Kentucky Central railroad, attached hereto are true
23 and correct, according to the best of his knowledge and belief.

(Signed) H. E. HUNTINGTON, *Receiver.*

Subscribed and sworn to before me this 27th day of September, 1886.

[SEAL.] JNO. B. EWAN,
*Notary Public, Kenton Co., Kentucky.*

*Annual Report of the Kentucky Central R. R. to the Auditor of Public Accounts of the State of Kentucky.*

Length of tracks.

| | | |
|---|---|---|
| In cities: | | |
| Covington | 1.00 mile. | |
| Cynthiana | .72 " | |
| Paris | .76 " | |
| | | 2.48 miles. |
| In incorporated towns: | | |
| De Mossville | .24 " | |
| Butler | .32 " | |
| Boston | .28 " | |
| Falmouth | .47 " | |
| Berry | .50 " | |
| Winchester | 1.25 " | |
| | | 3.04 miles. |
| In counties (exclusive of above): | | |
| Kenton county | 23.13 | |
| Pendleton " | 23.80 | |
| Harrison " | 19.91 | |
| Bourbon " | 16.65 | |
| Clark " | 15.70 | |
| Madison county | 25.20 | |
| 24 Rock Castle | 16.74 " | |
| | 141.13 " | |
| Total | 146.65 " | |

The estimated value per mile, including engines and cars, $13,000.00.

*List of Depot Grounds, Improvements, and Other Real Estate in the City of Covington.*

| | | |
|---|---|---|
| 1 lot on Washington St., bet. 8th & Pike, with two frame depot buildings | 6,000 | |
| 1 square, Washington & Madison & 13th & 14th Sts., with brick round-house, repair shop, blacksmith shop, and machine shop | 18,000 | |
| 2 half squares, west side of Washington St., 12th to 14th Sts., and an irregular piece south of 4th St., with two car-repair shops | 6,000 | |
| 1 vacant lot, S. W. cor. 8th & Washington St. | 1,500 | |
| 1 " " cor. Washington & Saratoga Sts. | 1,500 | |
| 1 vacant lot, cor. Washington & 10th Sts. | 500 | |
| 1 lot, Washington & 10th Sts., used for coal platform | 1,000 | |
| 1 lot, west side Washington & 10th Sts. | 1,000 | |
| 1 " east " " St., N. of 13th | 1,000 | |
| 7 vacant lots, S. E. cor. Washington & 14th Sts. | 1,000 | |
| 10 acres of ground, with small section-house | 5,000 | |
| 2 lots, west of Washington, bet. Bachelor & 11th Sts. | 900 | |
| Residence, cor 12th & Washington Sts., with two lots on east side of Washington St., S. of 12th St. | 5,500 | |
| | | 48,900 |
| In the city of Cynthiana: | | |
| 1 lot, with two frame depots & section-house | 2,000 | |
| 1 lot and frame house | 50 | |
| 25 1 lot and building leased to express Co. | 1,500 | |
| | | 2,200 |
| Forward | | 51,100 |
| Br't forward | | 51,100 |
| In city of Paris: | | |
| 3 lots, with freight depot, pump-house, and dwelling | 2,000 | |
| 1 lot, with passenger depot | 500 | |
| Coal wharf and water-tank | 1,100 | |
| | | 3,600 |
| | | $54,700 |
| In incorporated towns: | | |
| De Mossville: One small frame house | | 20 |
| Butler: 3 acres ground, with depot and sec.-house | | 1,200 |

| | | |
|---|---|---|
| Boston: 1 lot, with dwelling | | 150 |
| Falmouth: 1 lot, with depot, sec.-house, engine-house, and turn-table | 1,200 | |
| 1 lot, with house & water-tank | 500 | |
| | | 1,700 |
| Berryville: Stock-pens, depot grounds, & sec.-house | | 1,100 |
| Winchester: ½ interest in freight depot | 600 | |
| ½ " " passg. " | 900 | |
| Section-house | 500 | |
| Dwelling | 2,000 | |
| | | 4,000 |
| | | 8,170 |

In counties, outside of cities and incorporated towns:

| | | |
|---|---|---|
| Kenton county: Depot, Milldale | 200 | |
| 1 lot & frame house near Bank Lick | 150 | |
| 1 lot & frame house near De Coursey | 150 | |
| 1 lot & sec.-house near Culbertson | 100 | |
| 1 passenger depot, Locust | 200 | |
| Forward | 800 | |
| 26 Bro't forward | 800 | |
| 1 lot and frame house near bridge No. 3 | 100 | |
| 1 passenger depot grant | 400 | |
| 1 lot and tool-house near Visalia | 500 | |
| 1 lot, with house and water-tank, Cruise's Creek | 400 | |
| 1 lot and depot, Morning View | 500 | |
| 1 " " section-house, Alexander | 50 | |
| | | 2,850 |
| Pendleton county: | | |
| 1 lot, 1 sec.-house near Catawba | 100 | |
| 1 " " " " Levingood | 100 | |
| $9\frac{2}{10}$ acres near Falmouth | 460 | |
| | | 660 |
| Harrison county: | | |
| 1 lot, with depot, Boyd | 500 | |
| 1 " " tank, coal-shed, &c., Boyd | 350 | |
| 2 section-houses, Boyd | 350 | |
| Quarry, Boyd | 350 | |
| 2 lots and section-house near Robinson | 200 | |
| 1 " " " " " Poindexter | 100 | |
| 1 " with house and water-tank near Keller's R'dg | 250 | |
| 1 lot and section-house near Lair | 100 | |
| 1 " " section-house near Townsend | 150 | |
| | | 2,300 |

| | | |
|---|---|---|
| Bourbon county: | | |
| 1 lot and frame depot, Shawhan | 350 | |
| 1 " " section-house near Shawhan | 100 | |
| Forward | 450 | 5,810 |
| Brought forward | 450 | $5,810 |
| 2 frame houses on leased land, near Kiser | 50 | |
| Depot at Cunningham | 500 | |
| Depot " Austerlitz | 500 | |
| 2 section-house- and tool-house, Austerlitz | 550 | |
| | | 2,050 |
| 27 Clark county: | | |
| Depot and tank at Renick | 1,000 | |
| " " station at Rankin | 550 | |
| Section-house near Tunnel | 100 | |
| | | 1,650 |
| Madison county: | | |
| Depot at Boone | 800 | |
| Tank and pump-house at Shearer | 500 | |
| Section-house, Shearer | 100 | |
| Depot at Red House | 500 | |
| 2 section-houses at Hart's Ford | 500 | |
| Tank and pump-house, Hart's Ford | 500 | |
| Pass. depot, Berea | 700 | |
| Freight depot, Berea | 200 | |
| | | 3,800 |
| Rock Castle county: | | |
| Tank at Clear Creek | 500 | 500 |
| | | $13,810 |

Respectfully,

(Signed) H. E. HUNTINGTON, *Receiver.*

*Annual Return of the Maysville and Lexington Railroad, Northern Division, to the Auditor of Public Accounts of the State of Kentucky.*

Length of road.

| | | |
|---|---|---|
| In cities: | | |
| Paris | 15 miles. | |
| Maysville | 57 " | |
| | | 0.72 miles. |
| In incorporated towns: | | |
| Millersburg | 25 miles. | |
| Carlisle | 40 " | |
| | | 0.65 miles. |

In counties, outside of cities & incorporated towns:

| | | | |
|---|---|---|---|
| | Bourbon county | 9.85 miles. | |
| 28 | Nicholas county | 15.32 miles. | |
| | Fleming " | 9.00 " | |
| Mason | county | 13.81 " | |
| | | | 47.98 miles. |
| | Total | | 49.35 " |

Estimated value per mile, including engines and cars, $7,500.

*List of Depot Grounds and Improvements & Other Real Estate.*

In cities:

| | | |
|---|---|---|
| Paris: 1 lot, with engine-house | | 800 |
| Maysville: 1 lot, with engine-house | 1,000 | |
| Forward | 1,000 | 800 |
| Bro't forward | 1,000 | 800 |
| Maysville (cont'd): 1 lot and depot | 1,000 | |
| " 1 lot used as a coal yard | 150 | |
| | | 2,150 |

In incorporated towns:

| | | |
|---|---|---|
| Millersburg: 1 lot and depot | 500 | |
| Water station | 100 | |
| | | 600 |
| Carlisle: Pass. depot | 1,000 | |
| Freight depot | 2,000 | |
| | | 3,000 |
| | | $3,600 |

In counties, outside of cities & incorporated towns:

| | | |
|---|---|---|
| Bourbon county, (nothing). | | |
| Nicholas " 1 lot and depot, Myers | | 150 |
| Fleming " 1 lot " " Ewing | 300 | |
| " " " " " Johnson | 700 | |
| | | 1,000 |
| | | $1,150 |

Respectfully,

(Signed) H. E. HUNTINGTON, *Receiver.*

*Annual Return of the Maysville and Lexington R. R. Co., Southern Division, to the Auditor of Public Accounts of State of Kentucky.*

29 Length of road.

In cities:

| | | |
|---|---|---|
| Paris | .10 miles. | |
| Lexington | .80 " | |
| | | 0.90 miles. |

In incorporated towns, none.

In counties, outside of cities and incorporated towns:

| | | |
|---|---|---|
| Bourbon county | 10.90 miles. | |
| Fayette " | 7.37 " | |
| | | 18.27 miles. |
| Total | | 19.17 " |

Estimated value per mile, including engine and cars, $8,750.

*List of Depot Grounds and Improvements and Other Real Estate.*

In cities:

| | |
|---|---|
| Paris: 1 lot and section-house | 500 |
| Lexington: 2 depots, engine-house, water-tank, & coal-shed | 5,000 |

In incorporated towns, none.

In counties, outside of cities and incorporated towns:

| | | |
|---|---|---|
| Bourbon county: 1 section-house near Bryant | | 100 |
| Fayette Co.: 1 depot & store at Muir | 1,200 | |
| 1 lot & sec.-house near Clinton Pike | 100 | |
| 1 " " Hutchinson | 50 | |
| | | $1,350 |

Respectfully,
(Signed) H. E. HUNTINGTON, *Receiver.*

30 Annual return of the Richmond branch of the Louisville and Nashville railroad, leased by the Kentucky Central railroad, to the auditor of public accounts of the State of Kentucky.

Length of road.

In cities, none.

In incorporated towns:

| | | |
|---|---|---|
| Lancaster | .58 miles. | |
| Richmond | .46 " | |
| | | 1.04 miles. |

In counties, outside of cities & incorporated towns:

| | | |
|---|---|---|
| Madison | 14.73 miles. | |
| Garrard | 13.42 " | |
| Lincoln | 4.61 " | |
| | | 32.76 miles. |
| Total | | 33.80 miles. |

Estimated value per mile, including engines and cars, $7,500.

*List of Depot Grounds and Improvements & Other Real Estate.*

In cities, —.

In incorporated towns:

| | | | |
|---|---|---|---|
| Richmond: Pass. depot | $200 | | |
| Bro't forward | 200 | | |
| Richmond: Freight depot | 250 | | |
| Engine-house | 300 | | |
| Section " | 150 | | |
| | | 900 | |
| Lancaster: Pass. & fr'ght depot | | 500 | |
| | | | $1,400 |

In counties, outside of cities and incorporated towns:

| | | | |
|---|---|---|---|
| Madison Co.: Depot and water station, Silver Creek | 350 | | |
| Section-house, Duncannon | 50 | | |
| Depot, F'rt Estill | 100 | | |
| | | 500 | $500 |
| 31 Garrard Co.: | | | |
| Depot, Hyattsville | 150 | | |
| 2 section-houses & tool-house, Lowell | 400 | | |
| Depot and water sta., Paint Lick | 250 | | |
| | | | 700 |
| Lincoln Co.: | | | |
| Depot & section-house, Gilbert | 600 | | |
| Engine-house, Rowland | 150 | | |
| | | | 750 |

Respectfully,

(Signed) H. E. HUNTINGTON, *Receiver.*

Attest: FAYETTE HEWITT, *Auditor.*

*Auditor Statements of Accounts.*

Office auditor of public accounts.

FRANKFORT, KY., *April* 26, 1888.

Kentucky Central R. R. Co. Dr. to State of Kentucky to taxes as follows:

| | | |
|---|---|---|
| For 1884, $3,008,580, @ 52½c. on each $100 | $15,795 04 | |
| Paid on ac. Jan. 12, 1885 | 10,405 65 | |
| | | $5,389 39 |
| For 1885, $4,204,580, @ 52½c. on each $100 | | 22,074 04 |
| " 1886, 4,295,070, @ 51c. " " $100 | | 21,904 85 |
| | | $49,368 28 |

Office auditor of public accounts, State of Kentucky.

FRANKFORT, *Aug.* 2*nd*, 1888.

Kentucky Central R. R. Co., Richmond branch, Dr. to State of Kentucky, tax 1884.

| | | |
|---|---|---|
| | 408,950, @ 52½c. on each $100 | $2,146 98 |
| 32 | Paid on account Jan. 12, 1885 | 1,570 27 |
| | | 576 71 |

Attest: FAYETTE HEWITT, *Auditor.*

Office auditor of public accounts, State of Kentucky.

FRANKFORT, *Aug.* 2, 1888.

Kentucky Central Railroad Co. Dr. to State of Kentucky, tax 1884.

| | |
|---|---|
| $3,008,580, @ 52½c. on each $100 | $15,795 04 |
| Paid on account Jan. 12, 1885 | 10,405 65 |
| Balance due | $5,389 39 |

Attest: FAYETTE HEWITT, *Auditor.*

Office auditor of public accounts, State of Kentucky.

FRANKFORT, *Aug.* 2, 1888.

Maysville and Lexington R. R. Co., Northern division, Dr. to State of Kentucky, to tax 1884.

| | |
|---|---|
| 747,950, @ 52½c. on each $100 | $3,926 73 |
| Maysville & Lexington R. R. Co., Southern division, to tax 1884. | |
| 294,500, @ .52½ on each $100 | 1,546 12 |
| | $5,472 85 |
| 33 Paid on account, Jan. 12, 1885 | 3,222 25 |
| | $2,250 60 |

Attest: FAYETTE HEWITT, *Auditor.*

Office auditor of public accounts, State of Kentucky.

FRANKFORT, *Aug.* 2, 1888.

Maysville & Lexington Railroad Company, Northern division, Dr. to State of Kentucky, to tax 1885.

| | | |
|---|---|---|
| 49.35 miles, @ 15,000 per mi. | $740,250 | |
| Other property | 15,550 | |
| | $755,800 | |
| @ 52½c. on each $100 | | 3,967 95 |

Attest: FAYETTE HEWITT, *Auditor.*

Office auditor of public accounts, State of Kentucky,

FRANKFORT, *Aug.* 2, 1888.

Maysville & Lexington Railroad Co., Southern division, Dr. to State of Kentucky, tax *tax* 1885.

| | | |
|---|---|---|
| 19.17 miles, @ $15,000 per mi. | $287,550 | |
| Other property | 6,950 | |
| | $294,500 | |
| @ .52½ on each $100 | | $1,546 12 |

Attest: FAYETTE HEWITT, *Auditor.*

34 Office auditor of public accounts, State of Kentucky.

FRANKFORT, KY., *Aug.* 2, 1888.

Kentucky Central Railroad Company, Richmond branch, Dr. to State of Kentucky, to tax 1885.

| | | |
|---|---|---|
| 33.80 miles, @ $12,000 per mi. | $405,600 | |
| Other property | 3,350 | |
| | $408,950 | |
| @ .52½ on each $100 | | 2,146 98 |

Attest: FAYETTE HEWITT, *Auditor.*

Office auditor of public accounts, State of Kentucky.

FRANKFORT, KY., *Aug.* 2, 1888.

Kentucky Central railroad, from Covington to Winchester, Dr. to State of Kentucky, to tax 1885.

| | | |
|---|---|---|
| 94.91 miles, @ $20,000 per mile | $1,898,200 | |
| Other property | 70,330 | |
| | 1,968,530 | |
| @ 52½c. on each $100 | | $10,334 78 |

Kentucky Central railroad, from Winchester to Lexington, tax 1885.

| | | |
|---|---|---|
| 51.50, @ $15,000 per mile | $772,500 | |
| Other property | 4,300 | |
| | $776,800 | |
| @ 52½c. on each $100 | | $4,078 20 |

Attest: FAYETTE HEWITT, *Auditor.*

Office auditor of public accounts, State of Kentucky.

FRANKFORT, *Aug.* 2, 1888.

Maysville and Lexington Railroad Co., Northern division, Dr. to State of Kentucky, to tax 1886.

| | | |
|---|---|---|
| 49.35, @ $13,000 per mile | $641,550 | |
| Other property | 15,550 | |
| | $657,100 | |
| @ .51 on each $100 | | 3,351 21 |

Attest: FAYETTE HEWITT, *Auditor.*

Office auditor of public accounts, State of Kentucky.

FRANKFORT, *Aug.* 2, 1888.

Maysville & Lexington Railroad Company, Southern division, Dr. to State of Kentucky, to tax 1886.

| | | |
|---|---|---|
| 19.17, @ $15,000 per mi. | $287,550 | |
| Other property | 6,950 | |
| | $294,500 | |
| 36 @ 51c. on each $100 | | $1,501 95 |

Attest: FAYETTE HEWITT, *Auditor.*

Office auditor of public accounts, State of Kentucky.

FRANKFORT, *Aug.* 2, 1888.

Kentucky Central Railroad Company, Richmond branch, Dr. to State of Kentucky, to tax 1886.

| | | |
|---|---|---|
| 33.8 miles, @ $10,000 per mi. | $338,000 | |
| Other property | 3,350 | |
| | 341,350 | |
| @ 51c. on each $100 | | $1,740 88 |

Attest: FAYETTE HEWITT, *Auditor.*

Office auditor of public accounts, State of Kentucky.

FRANKFORT, *Aug.* 2, 1888.

Kentucky Central R. R. Co., main stem, Dr. to State of Kentucky, to tax 1886.

| | | |
|---|---|---|
| 146.65 miles, @ $19,000 per mi. | $2,786,350 | |
| Other property | 215,770 | |
| | $3,002,120 | |
| @ 51c. on each $100 | | $15,310 81 |

37 Attest: FAYETTE HEWITT, *Auditor.*

*Payments to Auditor.*

Office auditor of public accounts, State of Kentucky.

FRANKFORT, *Aug.* 2, 1888.

The following is a statement of the payments made by the Kentucky Central railroad to the State of Kentucky on account of taxes for years given below:

| | |
|---|---|
| Aug. 29, 1870: | |
| Am't received of H. P. Ransom, secretary, for State tax for the years 1870 on capital stock of said road | $6,026 78 |
| July 27, 1871: | |
| Amount received of H. T. Ransom, secretary, for State tax 1871 on capital stock of said road | $6,026 78 |
| July 26, 1872: | |
| Amount received of H. P. Ransom, secretary, for State tax 1872 | $6,026 78 |
| Aug. 5, 1873: | |
| Amount received of H. P. Ransom for State tax 1873 on capital stock | 6,026 79 |
| Oct. 2, 1874: | |
| Received of H. P. Ransom, sec., for and on account of State tax 1874 | 6,026 79 |
| Sept. 29, 1875: | |
| 38 Received of H. P. Ransom, sec., for and on account of State tax 1875 | 6,026 79 |
| Aug. 1, 1876: | |
| 80 miles, at a valuation of $20,000 pr. mile, $1,600,000, @ 40c. on each $100 | 6,400 00 |

Oct. 24, 1877:

80 miles, at a valuation of $20,000 per mile, $1,600,000, @ 40c. on each $100 ---------- 6,400 00

Nov. 11, 1878:

As per report of State board of equalization of railroads for 1878, $1,183,925, @ 40c. on each $100 ---------- 4,735 70

Dec. 22, 1879:

As per report of State board of equalization of railroads for 1879, $1,273,925, @ 40c. on each $100 ---------- 5,095 80

Jan. 20, 1881:

As per report of State board of equalization of railroads for 1880, $1,875,225, @ 45½c. on each $100 ---------- 8,532 27

Dec. 30, 1881:

As per report of State board of equalization of railroads for 1881, $2,035,225, @ 45½c. on each $100 ---------- 9,260 27

Dec. 29, 1882:

As per report of State board of equalization of railroads for 1882, $2,035,225, @ 47½c. on each $100 ---------- 9,667 32

Jan. 2, 1884:

39 As per report of State board of equalization of railroads for 1883, $1,715,225, at 47½c. on each $100 ---------- 8,147 31

Attest: FAYETTE HEWITT, *Auditor.*

*Causes to be Tried Together.*

At a court held on the 3rd day of July, 1888.

By consent of parties, these two actions are to be tried together.

*Answer Filed.*

Defendant appeared and filed its answer.

*Answer.*

Franklin Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Pl'ff,
*vs.*
THE KENTUCKY CENTRAL R. R. Co., Def't. } Answer.

For answer to the petition in the two causes above styled (to be tried together), the defendant, The Kentucky Central Railroad Company:

1. Denies that for either of the years 1884, 1885, or 1886 it re-

ported to the auditor of public accounts of the State of Ky., for the purposes of assessment, the length of its railroad or the value thereof per mile, or other property or the value thereof.

2. Admits that assessment was made as set forth in the petitions, but denies that it — any manner appeared before said board
40 of railroad commissioners or presented any facts, figures, or arguments for taxation of its property, except that def't always denied and still denies the right of said board to make any assessment, as is more fully set forth hereafter.

3. Says that by a certain act to amend the charter of the Covington and Lexington Railroad Company, approved March 3rd, 1851, it was enacted "that on the 1st day of January next, after the first declaration of dividends on the capital stock of said railroad company, and on every 1st day of January thereafter, it shall be the duty of the president and directors of said company to pay into the treasury of this Commonwealth a tax on each one hundred dollars' worth of stock in said railroad company equivalent to the rate of tax on each one hundred dollars' worth of property for State revenue, and no more, and resident stockholders shall not list their stock in said company for revenue tax nor be liable to payment of tax on the same in any other mode whatever;" and that by another certain act of the General Assembly of Kentucky, approved March 10th, 1856, entitled An act to amend the charters of the Covington and Lexington & Lexington and Danville Railroad Compa-
41 nies, it was enacted that said companies should be authorized to adopt as the name of the entire roads of the said two companies, extending from Covington to the northern line of the State of Tennessee, the name of the Kentucky Central Railroad Company, but that such name should not affect the rights of either of said companies.

That by another act of the General Assembly, approved Feb'y 22nd, 1871, entitled An act to incorporate the Kentucky Central Railroad Company, it was enacted that the purchasers and operators of said road, by the name of the Kentucky Central Railroad Company, should have and were thereby invested with all the powers, privileges, rights, immunities, and franchises, subject only to the restriction and limitation contained in the original charters of incorporation authorizing the construction of said railroad and the various — amendatory thereof, and providing that nothing in said act should subject said rights, privileges, or immunities to the operation of the act approved Feb'y 14, 1856, entitled "An act reserving the right to amend or repeal other laws," and vesting said rights, powers, privileges, and immunities in this defendant. This
42 def't says it is the same company intended by said act of February 22nd, 1871, and that it is not bound by law to pay more than a tax on each one hundred dollars' worth of capital stock of said railroad company, equivalent to the rate of tax on each one hundred dollars' worth of property for State revenue.

Defendant states that during the years 1884, 1885, & 1886, and at all times and dates thereafter, this defendant was and is insolvent

and its capital stock was and is of little value, to wit, not exceeding the sum of ten per centum upon its face or par value.

The par value of said stock was the sum of $5,449,100, and no more, and the actual worth of said stock was $544,910, and no more, at any time during said years; and defendant says that the actual value of its property, including operated lines not owned by it, was very greatly less than its assessed value in any of said years; that its actual value was not more than $1,500,000 at any time during said years, yet it was assessed at more than twice said sum for 1884, and for near three times that sum for 1885 & 1886.

43 Notwithstanding the premises, this defendant states that it desires to bear its full share of the public burdens, having enjoyed the protection of the laws of the Commonwealth, and therefore, while denying the validity of said assessment and denying the right of the plaintiff to recover any sum in this suit, the defendant offers to confess judgment for the sum of $25,000 in full of all the claims set forth in the petitions herein, provided that this offer shall not be deemed an admission that plaintiff has any cause of action, or that plaintiff is entitled to recover said sum or any sum.

RAMSEY, MAXWELL & RAMSEY,
HALLAM & MYERS, *For Def't.*

At a court held on the 4th day of July, 1888.

*Dem. to Ans. Filed & Overruled.*

The pl'ff filed a demurrer to def't's answer, and the matters of law arising thereon being heard, the court overruled the demurrer, and pl'ff excepts.

*Special Term Ordered.*

Ordered that a special term of this court be held on the 27th day of this month for the trial of these two causes.

Franklin Circuit Court.

44 *Demur. to Answer.*

COM'LTH KY., Pl'ff,
*vs.*
KENTUCKY CENTRAL RAILROAD CO., Def't. } Demurrer.

Pl'ff demurs to the answer of def't and says the matters plead and the facts set out do not constitute a good defence to the petition.

P. W. HARDIN, *Att'y Gen'l.*

At a court held on the 27th day of July, 1888.

*Continued until 3rd Aug.*, 1888.

The defendant appeared, by its attorney, and the attorney general being absent by reason of the death of his son, it is ordered that these two causes be continued until Friday, the 3rd day of August next.

At a court continued and held on the 3rd day of August, 1888.

*Amended Answer Offered.*

This day came the attorney general and the defendant, by its attorneys, and the defendant lodged with the clerk and offered to file its amended answer.

*Agreement as to Evidence.*

Then, for the convenience of the court and Messrs. H. E. Huntington and H. B. Morehead, witnesses present for def't, it was agreed between the att'y general and the defendant that the court might now hear the evidence of said witnesses, but this agreement
45 not to affect the right of either party to object hereafter to the evidence or any part of the evidence of either of said witnesses for any legal reason or cause, nor to affect the right of either party to file any pleading hereafter offered, nor the making of any issue hereafter.

And, under these conditions, the evidence of said witnesses was heard by the court.

*Continued to Aug. 20th & Leave to File Amended & Other Pleadings.*

Thereupon the court, of its own motion, extended this special term to Monday, Aug. 20th, and continued these causes until then, and the parties are required by the court to prepare and have ready to then file such additional pleadings as they desire to offer, and the court is adjourned to that day.

*Amended Answer. Offered 3rd Aug.*, 1888.

Franklin Circuit Court.

COMMONWEALTH OF KY., Plaintiff,
*vs.*
KENTUCKY CENTRAL R. R. Co., Defendant. } Amended Answer & Counter-Claims.

For amended answer the def't says that at the time of the passage of the act of 1851, pleaded in the original answer, no part of def't's road had been constructed, and that thereafter, on the faith of said act, a part of said road was constructed and was and still —
46 operated, to wit, from Covington to Paris, a distance of 78.83 miles; that after the passage of the act of March 10, 1856, pleaded in the original answer, and on the faith of the same and said former act, def't acquired control as stockholder of and operated the Maysville and Lexington railroad, Northern and Southern divisions, from Maysville to Lexington, a distance of 68½ miles, in addition to its original road; that after the passage of the act of 1871, pleaded in the original answer, and on the faith of the same, and of said two prior acts, the def't constructed and operated the Richmond branch from Richmond to Rowland, on the Louisville and Nashville railroad, a distance of 33.04 miles. Defendant says that

all of said acts were accepted by it, and that the consideration for the provision in them contained, that def't should be taxed on no more than the actual worth of its stock, was that def't should construct and acquire railroads between said points and perform the duty of operating them as a public servant, to wit, as a common carrier of passengers and freight, and by means of said provisions as to
47 taxation def't was, and its stockholders and owners were, induced to embark in such construction, acquisition, and operation, and to invest their means therein, to the great and obvious advantage of the State in facilitating transportation of her people, her troops and stores.

Def't further says its stock was not worth more than $1,-36,240 in 1884, 1885, or 1886.

Def't says there was overpaid to the pl'ff as tax for 1884 more than sufficient to pay def't's taxes for 1885 and 1886, and def't pleads said over-payment as a set-off, and prays that the petition be dismissed, and for all proper relief.

HALLAM & MYERS,
*Att'ys for Def't.*

STATE OF KENTUCKY, *Kenton County,* } *sct:*

Lewis Hood says he was secretary of the def't under its last organization, and there is no other chief officer of def't in Kentucky, and affiant believes the statements of the foregoing amended answer and of the original answer are true.

LEWIS HOOD.

48 Subscribed & sworn to before me by Lewis Hood this 13th day of July, 1888.

HARVEY MYERS,
*Notary Public, Kenton Co., Ky.*

At a court continued and held on the 20th day of August, 1888.

*Am'd Pet. Offered.*

Came the attorney general and the def't, by attorney, and the pl'ff offered to file an amended and sup-lemental petition; to which def't objected, and the court took time.

*Am'd Ans. Offered 3rd Aug.*, 1888, *Filed in Part.*

The pl'ff now objects to the filing of the amended answer lodged with the clerk and offered to be filed on the 3rd day of Aug., 1888, and the court overruled said objection to so much of said amended answer as does not attempt to plead a set-off and allows same to be filed; to which pl'ff excepts, and the court sustains the objection to so much of said amended answer as attempts to plead a set-off and refuses to allow the same to be filed; to which def't excepts, and the whole of said amended answer is made part of this record.

*Dem'r to Am'd Ans. Overruled.*

The pl'ff filed *his* demurrer to said amended answer, and the court, having heard and being advised, overruled the demurrer, and pl'ff excepts.

49 *Amended Petition Noted.*

The court overrules the def't's objection to the filing of the amended and sup-lemental petition offered to-day, and permits the same to be filed; to which def't excepts.

*Dem'r to Am'd Pet. Filed & Overruled.*

The def't filed a demurrer to the amended and sup-lemental petition, which was this day filed, and the court, having heard, overruled the same; to which def'ts excepts.

*Ans. & Am'd Ans. Denied of Record.*

By consent the affirmative allegations of the answer and amended answer are now by pl'ff traversed of record.

*Evidence of Witnesses & Exhibits Made Part of Record.*

The evidence of Huntington and Morehead, as reported by stenographer, was read and is made part of this record.

It was agreed that the various exhibits filed should be, and the same were, read as evidence and made part of this record without objection to the manner in which the same were authenticated as copies.

*Judgment.*

The court, having heard the case, on the pleadings, exhibits, and evidence of witnesses finds:

First. That the def't, The Kentucky Central Railroad Com-
50 pany, operated and was and is liable for taxes upon the Maysville and Lexington railroad, Northern and Southern division, and upon the Richmond branch of the Kentucky Central railroad and upon the Kentucky Central railroad from Winchester to Lexington for the years 1885 & 1886, and that the assessment of taxes on the said four above-named branches and portions of the property of the Kentucky Central Railroad Company was correctly and lawfully made under the general statutes.

There is no separate assessment of the branch from Winchester to Lexington for the year 1886, but the court finds that, in proportion to the whole amount assessed on the whole $146\frac{65}{100}$ miles, the taxes for 1886 on said part of the road was $5,159.70, and that the total amount of taxes thus properly assessed against those portions of the property of defendant for the years 1885 and 1886 was $23,492.99.

The court further finds from the evidence that the aggregate

marked value of the stock of the defendant for the years 1884, 1885, and 1886 was in each year $136,240.00.

51 The court finds the law to be that the defendant as to so much of its property as was constructed under its original charter and amendment—that is, as to its main stem from Covington to Lexington—cannot be taxed under the general statutes, but must be taxed on each $100 worth of its stock, and that section 4 of the act approved March 3rd, 1851, fixes the mode of assessment and gives the def't the right to be taxed only on the market value of its stock, and that the State has no right to tax def't as to that part of its property in any other manner nor upon any other valuation. As to that part of its property the def't has not been assessed for those years as provided by the act, but it confesses its liability as above set out.

The taxes against def't on that part of its property on this basis for the years 1884, 1885, & 1886 amount in the aggregate to $2,065.34, which sum added to the amount above found ($23,492.99) make the total taxes involved in these two actions $25,558.33.

52 It is therefore adjudged that the Commonwealth of Kentucky recover of the def't, The Kentucky Central Railroad Company, the sum of twenty-five thousand five hundred & fifty-eight & $\frac{33}{100}$ dollars and her cost herein expended.

On this judgment interest, at the rate of ten per cent. per annum, is allowed as follows: On $688.44, from 10th October, 1884, until paid; on $11,827.70, from 10th Octo., 1885, until paid, and on $12,442.19, from 10th Octo., 1886, until paid, and two per cent. on the amount of debt and interest will be collected for attorney general's fee.

*Appeal Granted Each Party.*

The plaintiff and defendant each excepts to the foregoing judgment and each prays an appeal to the court of appeals, which is granted.

The demurrers to the amended answer is as follows:

*Demur- to Amended Answer.*

Franklin Circuit Court.

COMMONWEALTH OF KY.
*vs.*
KY. CENTRAL R. R. CO. } Demurrer.

53 The pl'ff demurs to the amended answer and says the facts therein set out do not constitute a good defense to plaintiff's action.

P. W. HARDIN, *Att'y Gen'l.*

The amended and supplemental petition is as follows:

*Amended & Supplemental Petition.*

Franklin Circuit Court.

THE COMM'LTH OF KY.
*vs.*
KENTUCKY CENTRAL RAILROAD CO. } Amended Petition.

The plaintiff amends her petition herein and, reaffirming all the allegations of the petition as amendatory and supplemental thereto, further says that the account sued on for the taxes for the year 1885 is the aggregate assessments of various railroads and divisions of roads, with the depots, rolling stock, and other property, owned and operated by def't during the years 1884, 1885, 1886, & 1887. Plaintiff avers that each of said roads, with their depots, cars, engines, & other property, was separately reported for assessment and taxation by def't as required by law, and were each separately valued and assessed for taxation for the year 1885. A certified copy of said report to the auditor of public accounts is herewith filed as part hereof, marked "A."

Plaintiff states that the board of equalization and assess-
54 ment in the manner and as set out in the original petition valued and assessed for taxation the Kentucky Central railroad with other property from Covington to Winchester at the sum of $10,334.78, and the same road, with other property from Winchester to Livingston at $4,078.20.

They valued and assessed the Maysville & Lexington railroad, Southern division, with other property, at $1,546.12; the same road, Northern division, at $3,967.95. They valued the Kentucky Central railroad, Richmond branch, which said road was leased by def't under agreement to pay all taxes assessed and due the State, and was operated, used, managed, and controlled by def't, at the sum of $2,146.98. Pl'ff says these valuations and assessments were all returned to the auditor of public accounts and charged against the def't in said separate accounts, certified copies of which, marked 1, 2, 3, & 4, are filed herewith, and these aggregate the whole sum and claim in the original petition.

Pl'ff avers that the def't is indebted to the pl'ff in these various sums, taxes due for the year 1885, with interest from October 1st, 1885.

55 Wherefore pl'ff prays judgment for said sum and interest and for all proper relief.

Par. 2. Pl'ff further says that the account sued on for taxes for the year 1886 is the aggregate amount and valuations of the same railroads and other property set out in paragraph No. 1; that a full report of the number of miles of road, depots, cars, engines, and other property of def't in these different roads, owned and operated by them, was made to the auditor of public accounts by the def't for assessment and valuation for taxation for the year 1886, a certified copy of which report is filed herewith as part hereof, marked "B."

Pl'ff avers that the board of equalization in the manner and as set out in the petition upon these said reports valued and assessed for taxation the Kentucky Central railroad and other property, main line from Covington to Livingston, at $15,310.81.

They valued and assessed the Maysville & Lexington railroad, Northern division, at $3,351.21; same road, Southern division, at $1,501.95. They valued and assessed the Kentucky Central railroad,
Richmond branch, and other property (which said road was
56 leased to def't under an agreement to pay all taxes assessed and due the State, and which road was for the time owned, controlled, managed, and operated by def't) at the sum of $1,501.95.

Pl'ff says that these valuations and assessments were all returned to the auditor of public accounts by the board of equalization and charged against the def't in said separate accounts, certified copies of which, marked 5, 6, 7, & 8, are filed herewith as part hereof, and these aggregate the whole sum and claim set out in the petition.

Pl'ff avers that the def't is indebted to the pl'ff in these several sums, taxes due for 1886, with interest as claimed in the petition.

Wherefore pl'ff prays judgment for said sums, with interest, and for all proper relief.

P. W. HARDIN,
*Att'y General.*

The demurrer to the amended petition is as follows:

*Dem'r to Amended Petition.*

Franklin Circuit Court.

COMM'LTH OF KY. *vs.* K. C. R. R. Co. } Demurrer to Amended Petition.

The def't demurs on the ground that same does not state a
57 cause of action to so much of the amended petition filed August 20th, 1888, as claims against this def't any tax upon the Maysville and Lexington railroad.

2. And to so much thereof as claims any taxes against this defendant upon the Richmond branch, the property of the Louisville and Nashville Railroad Co. leased to this defendant.

3. And to so much thereof as claims any tax upon this def't's railway from Covington to Lexington, under the assessment made by the board of railway commissioners.

4. And to so much thereof as claims any tax on any branch or extension of def't's original road in Clark county or Madison county, same being counties adjoining the counties in which def't's original road was located.

5. And to all other parts of pl'ff's said amended petition as insufficient to enable this court to find any judgment.

HALLAM & MYERS,
*For Defendant.*

58 The following is the evidence taken and reduced to writing by a stenographer:

Franklin Circuit Court, Special Term, August, 1888.

FRANKFORT, KY., *August 3rd*, 1888—11.30 a. m.

*Testimony Taken in Case of Commonwealth of Kentucky vs. Kentucky Central R. R. Co.*

Attorneys present: Hon. P. W. Hardin, attorney general, for Commonwealth, and Hon. T. J. Hallam, for Ky. Central R. R. Co.

*H. E. Huntington's Evidence.*

H. E. HUNTINGTON sworn, and examined by Mr. HALLAM:

Q. Where do you live, and what connection had you with the Kentucky Central Railroad Co. in 1884, 1885, and 1886, and subsequent thereto?

A. I live in Cincinnati. I had no connection with the Kentucky Central in 1884 or in 1885 until March or April of that year. Since that time I have served as superintendent and receiver.

Q. Receiver in what case?

A. In case of Bliss & Gates, I believe, against the Ky. Central. That was in the U. S. circuit court.

Q. What was that suit about?

A. It was for the default of interest on the bonds of the company—to foreclose a mortgage.

59 Q. If you know, state what was the value of the stock of that railroad company in those years.

A. I cannot say what the value of the stock was. Intrinsically, it had no value.

Q. State what was the value of the railroad and all its equipments, including the interest it had in the Maysville & Lexington and in the Richmond branch.

A. The road was sold April 23rd, 1887, for $1,300,000, subject to $400,000 Maysville and Lexington bonds. The rolling stock on same sold for $205,000. The road, however, at this time, was in very much better condition physically than it was in 1884, 1885, and the first part of 1886.

Q. When did it come into your hands as receiver?

A. I think it was on the 29th of February, 1886.

Q. Do you mean to say that it had been better during the administration of the receiver?

Ans. Yes, sir.

Q. What was the extent of the advertising done before that sale?

A. It was advertised for several weeks—I cannot say how many—in New York, Boston, Cincinnati, and Lexington papers.

60 Q. Was there any competition in the bidding at the sale?

A. There was.

Q. Was not the purchase price paid about the real value of the property?

A. It was supposed to be.

Q. What was the nature of the interest the Ky. Central Railroad Co. had in the Maysville & Lexington?

A. The Ky. Central was the owner of the stock of the Maysville & Lexington R. R., Southern division—that is, from Paris to Lexington. The stock of the Northern division, Maysville and Lexington, was owned by the Maysville & Lexington, Southern division.

Q. What was the nature of the interest in what is called the Richmond branch of the Ky. Central R. R. Co.?

A. It is operated under a lease from the Louisville & Nashville Co., with privilege of purchase.

Q. Has it ever been purchased?

A. It has not been purchased.

Q. Do you mean to say that the Ky. Central was the lessee of that road for those years?

A. Yes, sir; and operated the road.

Q. What does the Richmond branch consist of?

A. Simply the road-bed, right of way, and buildings—that
61 is, from Richmond to Rowland.

Q. How many miles is that?

A. That is 33.80 miles.

Q. Have you the length of the Maysville & Lexington there (referring to memorandum which witness has)?

A. Yes, sir.

Q. What is that?

A. 49.33 miles, Maysville branch, Maysville to Paris. The Southern division is 19.17 miles.

Q. What did the Ky. Central R. R. proper include?

A. 150.97 miles, running from Covington to Lexington through Paris and Winchester.

Cross-examined by General HARDIN:

Q. Have you a copy of that lease from the Louisville & Nashville R. R.?

A. Not with me.

General Hardin says he would like to have a copy to file with this petition. Witness states that he can furnish copy of it.

Q. When was this road leased—the Richmond branch?

A. I don't know whether I have the information here or not.

Redirect by Mr. HALLAM:

Q. Did the Maysville & Lexington R. R. Co. have its cor-
62 porate meetings and elect its officers annually separate from the Ky. Central?

A. It does.

Witness resumes in answer to General Hardin's question: The extension was opened Aug. 19th, 1884—that is, the extension of the Kentucky Central; I mean the leased Richmond branch that was operated in 1884, the Richmond branch of this company.

Q. You say the Maysville & Lexington branch was owned by a separate company, and held their separate elections?

A. Yes, sir.

Q. Are not the members of the company the same?

A. I don't know who the members of the company are.

Q. Are not the officers of the two companies the same?

A. That I cannot tell you. I was never at one of their meetings. I know I have nothing to do with it.

Q. Are you not superintendent of the company operating that road?

A. Yes, sir.

Q. Is not that the same company that owns the road? Are not the officers of the companies the same?

A. I cannot say whether the directors are or not.

63 Q. You say, then, that they are not the same?

A. No, sir; I don't say that.

Q. Don't know who the company are?

A. No, sir; the secretary of that company is the same as my secretary.

Q. Have they not the same officers—the same directors?

A. I don't know whether they are or not.

Q. Have they not the same secretary?

A. They have the same secretary; yes, sir.

Q. Have they not the same general subordinate officers aside from the secretary?

A. I could not say as to the president, vice-president, or directors. I couldn't say whether they are the same as the Ky. Central or not.

Q. How did that company get possession of that road?

A. I could not say, except from hearsay. I know that the company own the stock practically—all of it—in the Maysville & Lexington, Southern division. I think there are ten or twelve shares not owned by the company.

Q. All the stock of the Maysville & Lexington R. R. Co., Northern and Southern divisions, is owned by the Ky. Central R. R. Co., is it not?

A. The stock of the Southern division, with the exception

64 of a few shares, perhaps ten or fifteen, is owned by the Ky. Central. The stock of the Northern division, Maysville and Lexington, is owned by the Southern division, Maysville & Lexington.

Q. And the Maysville & Lexington, Southern division, is owned by the Ky. Central?

A. Yes, sir.

Q. Then is not the other owned by the Ky. Central?

A. Practically it is.

Q. If I understand you, then, all the known stock of the Southern division is owned by the Ky. Central R. R.?

A. All but ten or fifteen shares, the owners of which are unknown.

Q. Then all stock of the Northern division is owned, as you say, by the Southern division?

A. Yes, sir.

Q. Do not they own it as a corporation under the name and style of the Kentucky Central Railroad Co., all this stock of the Southern division, and through the Southern division own the Northern division? I refer to the railroad property and the stock—the whole thing.

A. The Ky. Central don't own a share of the stock, that I know of, of the Northern division, but own the stock of the Southern division, which company owns the stock of the Northern division.

65 Q. And that is the Kentucky Central R. R. Co.?

A. I could not state as to that.

Q. Explain what you mean, then. If I understand you, the stock and the property of the Northern division are owned by the Southern division and the Ky. Central R. R. Co. owns the Southern division?

A. Owns the stock of the Southern division.

Q. Do not they own also all the property that the Southern division owns?

(Hallam objects, saying that is a question of law. The court thinks the following query may be propounded: "The stock of the Northern division absorbed in the stock of the Southern division before or since the Ky. Central R. R. became the owner of the Southern division?" to which witness answers, "I could not state as to that; all these transactions occurred before I became superintendent. The Ky. Central bonds do not cover the Maysville & Lexington, Northern division; whether they cover the Southern division or not I do not know; I have forgotten as to that. These bonds are on the Maysville & Lexington R. R.")

Q. Is it not a fact that under this title and ownership you have just mentioned the Ky. Central R. R. operated both Northern & Southern division?

66 A. Yes, sir.

Q. And did in the years 1884, 1885, & 1886?

A. I think they did, but am not positive.

Q. Are you not, as the representative of the company, the superintendent of both the Northern and Southern divisions of the Maysville & Lexington road?

A. What is operated by the Ky. Central, I am.

Q. In addition to your capacity as receiver, are you not by the election of the company, the Ky. Central R. R. Co., the superintendent of all of these roads?

A. I am the vice-president and general manager of the Ky. Central; was superintendent at that time.

Q. Were you not the superintendent in the years 1884, 1885, & 1886?

A. I was not. I was superintendent part of 1885; I was superintendent, but not general manager at that time.

Q. Were you vice-president?

A. No, sir; I was superintendent from March or April, 1885, until February 28th, 1886.

Q. How came you superintendent?

A. By appointment of the general manager.

Q. Were you not superintendent of the Ky. Central R. R. Co. from 1884 until the purchase—I mean from 1885 until the purchase?

67 A. No; I was not superintendent all the time. My connection ceased with the company in February, 1886—with the Ky. Central R. R. Co. I mean that was the date I was appointed receiver.

Q. Do the same individuals that composed the Ky. Central R. R. Co. now control the Ky. Central R'y Co.?

A. Not all of them; there have been some changes.

Q. Is not the large majority of the stock now owned by the same parties that owned the other?

A. Yes, sir.

Q. What proportion of it is owned?

A. That I am unable to state.

Q. About how much?

A. I could not state that; I do not know.

Q. When was the Ky. Central R'y Co. chartered?

A. I could not say at what date.

Q. About when?

A. I am not very good at remembering dates. I have the charter, but haven't it with me.

Q. To the best of your recollection, when was it?

A. It was something over a year ago—organized under the general laws of the State.

Q. The present company that holds the road was organized under the general laws of the State?

A. Yes, sir.

68 Q. Did the Kentucky Central R. R. Co., as such, through its meetings and its action as a company, agree to organize under the general law and purchase that road?

A. I don't know.

Q. Are not the stockholders of the old Kentucky Central R. R. Co. and the new Ky. Central R'y Co. substantially the same?

A. Not all the same.

Q. Substantially the same?

A. I think it is very likely.

General Hardin concludes cross-examination here, and says he wants copy of lease from Louisville & Nashville R. R. filed.

*H. B. Morehead's Evidence.*

H. B. MOREHEAD sworn and examined.

By Mr. HALLAM:

Q. Where do you live, what is your vocation, and where did you live in 1884, 1885, and 1886?

A. I lived in Cincinnati, O.; my business is that of stock and bond broker, and was such in 1884, 1885, & 1886.

Q. Do you know what was the value of the stock of the Ky. Central R. R. Co. during those years?

A. Yes, sir; market value.

Q. That is what it sold for or could be sold for during those years?

A. Yes, sir.

Q. What was the value of it during those years?

69 A. It fluctuated badly. Its sales were as low as ten, and sales as high as twenty-five, and there were bids as low as 2½ and the offers as high as 25, and I suppose it would have sold at almost any of these prices during those three years. Practically, it had no sale for awhile. 2½ means no price at all.

Q. I inquire as to the actual selling value. What did it sell for during those years?

A. It is pretty hard to tell; a good portion of the time there was no sale at all. I gave you the extreme figures, 2½ and 25. In the early part of 1884 some sales were made as high as 25; that was in January, 1884; then it went gradually down to sales as low as 10 during the latter part of the year. Along in 1885 it got down to 2½ bid and 7½ asked on our street, which corresponds to a stock exchange. Then it picked up a little, about up to 20 cents. I suppose a fair average street valuation would have been 8 or 10 cents for the three years.

Q. Were assessments made on the stockholders during that time?

A. Two assessments of five per cent. were made in 1884.

Q. What relation did these quotations of stock bear to the assessments?

A. They didn't seem to change it much. Right after
70 the assessment the market price was just about the price before the assessment.

Q. How was it before the assessment?

A. It would not sell for much at all.

Q. After the assessment was raised that raised the market value up to about the assessment?

A. That's about the size of it. People had an idea that the road would be closed out entirely, that additional assessments would be made, and nobody wanted the stock.

Q. What was the highest and lowest for the year 1885?

A. 2½ bid and 7½ asked on the first of May, 1885. October about the same. In December, 1885, there were some sales made at 20 cents; these were a few shares that were sold. For months and months there were no sales. The asking price is no criterion; the asking price may be 125, and the stock worth nothing.

H. E. HUNTINGTON recalled.

By General HARDIN:

Q. How much stock in the Ky. Central R. R. Co. was there in 1885, 1886, and 1887 up to the time of sale?

71 A. I think it was on December 31, 1884, there was common stock to the extent of $5,464,600.

Q. What was it in 1885?

A. $4,466,300.

Q. How do you get the stock less in 1885 than in 1884?

A. I cannot tell you how it was less.

Q. What was it in 1886?

A. I haven't 1886. This was Dec. 31, 1885. I take the reports of the company for these statements. (Witness has printed schedule before him.)

Q. You do not know what it was in 1887?

A. No, sir.

Q. Did that embrace the stock of these different roads that it leased or purchased?

A. That was the stock of Ky. Central.

Q. What was the stock of the Maysville & Lexington, Northern division?

A. I don't know anything about that. I never looked into the matter to see what their stock was.

Q. What was embraced in this Ky. Central at that time?

A. I could not tell you exactly what it was. I will see if it states here. (Witness refers to published statement.) It embraces
72 here the main line, Covington to Lexington—that is, the miles operated. Of course the stock of the Maysville & Lexington has no value whatever.

Q. The stock has no value whatever?

A. No, sir.

Q. How much stock was there in that road?

A. I do not know.

Q. The road had a value, hadn't it?

A. Not much. I wouldn't give 10 cents for the Maysville & Lexington R. R., Northern division, and agree to keep it. It is to help it to get business; that is the only value that road is to the Ky. Central.

Q. This Winchester division—is there not a road from Winchester down to Lexington that you own?

A. No, sir.

Q. Do you not lease that?

A. No, sir; have nothing to do with it.

Q. Winchester to Richmond?

A. Yes, sir; that is part of the Ky. Central that is included in this statement.

Q. How much stock is there in the present company that owns it?

A. I don't know exactly.

Q. I would like to know, as nearly as you can tell me.

A. I haven't the report of the present company with me.

Hallam objects. The objection sustained.

73 Redirect by Mr. HALLAM:

Q. Was the quantity of stock in the Ky. Central R. R. Co. largely

in excess of what it should have been to represent the actual value of the property?

A. Certainly it was.

Q. Do you know how it came that it was made so large?

A. I do not know.

Q. Know anything about the litigation—the old litigation in the court of appeals with the Bowlers?

A. No, sir.

Q. Don't know anything about the stock being largely watered then?

A. No, sir.

Recross-examined by General HARDIN:

Q. In this lease from the Louisville & Nashville R. R. Co. were you not to bear all the expenses of the road, including taxation?

A. I believe we are; yes, sir.

H. B. MOREHEAD recalled.

By Mr. HALLAM:

Q. Do you know anything about that stock being watered at the time of the settlement with Bowler?

A. Only hearsay.

Taking of testimony concluded here.

74 FRANKLIN CIRCUIT COURT OFFICE.

I, W. Franklin, clerk of the court aforesaid, do certify that the foregoing 85 pages and the above lines contain a full, true, and complete transcript of the record and proceedings had in the causes therein mentioned so far as the same is now of record and now on file in said court.

Witness my hand this 23rd day of August, 1888.

W. FRANKLIN, *C. F. C. C.*,
By W. M. FRANKLIN, *D. C.*

Upon the filing of the foregoing transcript the appellant made and filed the following statement:

Court of Appeals of Kentucky, September Term, 1888.

THE KENTUCKY CENTRAL RAILROAD CO., Appellant,
*vs.*
THE COMMONWEALTH OF KENTUCKY, Appellee. } Statement.

Appeal from Franklin circuit court.

The judgment appealed from was rendered August 20, 1888, and is on page 49 of the record.

75 Appeal granted below. No process required.

HALLAM & MYERS,
*For Appellant.*

Afterwards, at a court of appeals held in and for the State of Kentucky on the 11th day of September, A. D. 1888, the following order was made:

KENTUCKY CENTRAL RAILROAD CO., Appellant, *vs.* COMMONWEALTH OF KY., Appellee. } Appeal from Franklin Circuit C't.

Came the appellant and filed grounds and moved the court to advance this case.

The following are the grounds referred to in the above order:

The appellant moves the court that this cause be docketed and advanced for hearing on the grounds—

1st. That the cause relates to the State revenue.

2nd. It is important that the questions involved be finally determined before the December term of the U. S. court at Covington, in which court all the affairs of appellant are being wound up, and at which time all appellant's assets & the proceeds will be ordered distributed.

HALLAM & MYERS,
*For Appellant.*

76 1888, Sept. 11.—Filed.
Att.: T. J. HENRY, *C. C. A.*

*Docketing.*

Afterwards, on Sept. 13, 1888, ordered that this case be docketed and advanced.

*Noting Argument & Submission.*

Afterwards, on October 11, 1888, this cause came on and was argued by P. W. Hardin, for appellee, and T. J. Hallam, for appellant, and submitted.

*Order Granting Cross-Appeal.*

Afterwards, on December 13, 1888, ordered that the order of submission herein be set aside and that a cross-appeal be granted *nunc pro tunc* as of October 11th, 1888, and that the cause be resubmitted.

*Judgment.*

The court being sufficiently advised, it seems to them the judgment herein is erroneous.

It is therefore considered that said judgment be affirmed on the original appeal and reversed on the cross-appeal, and remanded for further proceedings consistent with the opinion, which is ordered to be certified to said court.

It is further considered that the appellee recover of appellant its costs on the original and cross appeal herein.

77. On the said 13th of December, 1888, the court delivered the following opinion, to wit:

Kentucky Court of Appeals, December Term, 1888.

KY. CENTRAL R. R. Co., Appellant,
*vs.*
COMMONWEALTH OF KY., Appellee. } Opinion.

Opinion of the court delivered by Lewis (chief justice):

This is an appeal from a judgment rendered in two actions tried together which the Commonwealth of Kentucky instituted against the Kentucky Central Railroad Company to recover the amount of taxes alleged to be due & unpaid for the years 1884, '5, '6 according to returns made by the officers of the company to the auditor of public accounts of the State and the valuation made by the board of equalization, as provided by an act approved April 3rd, 1878, entitled "An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation and for taxing same."

As appears from a copy of the returns made to the auditor, the defendant owns & operates, as parts of its system, the following roads: The Covington & Paris road, the Maysville & Lexington road—Southern and Northern divisions—Paris & Livingston road, and the Richmond branch of the Louisville & Nashville
78 road.

We think there is no room for controversy about the liability of the defendant to pay taxes in some mode upon all of those roads, for it not only controls, has the possession, & operates each one of them, but they were all returned to the auditor as subject to taxation, and the only question is as to the mode in which they ought to be taxed & the amount of taxes the company is liable for.

In 1847 the Licking & Lexington Railroad Company was incorporated with the right to construct a road from Covington to Lexington, it being provided in the charter that a tax of twenty-five cents on each share of stock of fifty dollars owned and held by any stockholder should be annually paid into the State treasury by the president & directors of the company.

In 1849, by amendment to the charter, the name of the corporation was changed to "Covington & Lexington Railroad Company," and March 3, 1851, an act was passed farther amending, sec. 4 of which is as follows:

"That on the first day of January next, after the first declaration of dividends on the capital stock of said railroad company, and on every first day of January thereafter it shall be the duty of the president and directors of said company to pay into the
79 treasury of the Commonwealth a tax on each one hundred dollars' worth of stock in said railroad company equivalent to the rate of tax on each one hundred dollars' worth of property for State revenue, and no more; and resident stockholders shall not

list their stock in said company for revenue tax nor be liable to payment of tax on the same in any other mode whatever."

But February 22, 1871, "An act to incorporate the Kentucky Central Railroad Company" was passed, the first section of which is as follows: "That Geo. H. Pendleton, John W. Stevenson, Wm. Ernst, J. C. Gedge, G. Bowler, and E. H. Pendleton, their associates and successors, be, and are hereby, created a body corporate & politic under the name & style of the Kentucky Central Railroad Company for the purpose of operating the Covington & Lexington railroad, of which they are the owners by purchase under judgment and order of sale of the Fayette circuit court, and shall have and are hereby invested with all the powers, privileges, rights, immunities, & franchises, subject to the restrictions & limitations contained in the original charter of incorporation authorizing the construction of said railroad and to various acts amendatory thereof, provided nothing in this act shall be held to subject the said powers, rights, immunities, & privileges purchased under judgment & order of sale of the Fayette circuit court and hereby vested in the corporation by this act created to the operation of the act entitled 'An act reserving the right to amend or repeal charters or other laws,' approved Feb'y 14, 1856, but the same are exempted thereupon," &c.

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It is contended that, according to a proper construction of section 4 of the act of April 3, 1851, quoted, the defendant is not liable to pay taxes on the stock according to its face, but only according to its actual value; but it is not material how that section should be construed unless it be determined that the Kentucky Central Railroad Company, in virtue of its purchase at the judicial sale mentioned & of the act of incorporation passed in 1871, is exempt from the operation of the act of April 3, 1878, applicable to railroad companies generally.

It appears that at the time the property of the Covington & Lexington Railroad Company was sold under the judgment mentioned it had constructed & was operating under its charter only so much of the road, it was authorized thereby to build as extended from Covington to Paris, where it connected with the Maysville & Lexington road, which was constructed & operated under the charter of another corporation, and all the other roads reported to the auditor as owned and controlled by the Kentucky Central Railroad Company have been constructed or acquired by it since 1871.

81

We therefore think no part of the system belonging to the defendant, if any at all, is exempt from the general law prescribing the mode of assessing & taxing railroad property in the State unless it be that portion between Covington & Paris, and it was so decided by the lower court. Louisville, C. & L. R. Co. *vs.* Com'lth, 10 Bush, 43.

There are two propositions of law which have been so often announced by this court and by the Supreme Court of the United States, and are so just and necessary to the sovereignty and dignity

of the State and the general welfare that they cannot be now called in question.

The first is that immunity from taxation is a mere personal privilege, pertaining alone to the corporation or natural person originally invested by the legislature with it, and, as a consequence, not transferable by sale or succession.

Second. That the taxing power of a State is never presumed relinquished unless the intention of the legislation to relin-
82 quish is declared in clear and unambiguous terms. Morgan *vs.* Louisiana, 93 U. S., 221; Willson *vs.* Gaines, 103 U. S., —; L. & R. R. *vs.* Palmer, 109 U. S., 250; Memphis R. Co. *vs.* Comm'rs, 112 U. S., 617; E. H. & — R. Co. *vs.* Com'lth, 9 Bush, 439; L., C. & L. R. R. *vs.* Com'lth, 10 Bush, 43; Barbour *vs.* Masonic T. C.

This is, it is true, not a case where entire immunity from taxation is claimed; but it does involve the claim by one corporation of exemption from the mode provided by a general law of assessing and taxing the property of similar corporations.

It will be practically relieved of paying its fair & equal share of taxes.

And, in our opinion, the same principle is involved, and the same rule of construction should be applied in this case as if the claim was for entire exemption from taxation.

In fact, while under certain conditions an exemption may be granted—we do not know upon what principle—a corporation, the power to tax it being conceded, can claim an exemption from tax laws made applicable to all other similar corporations and a consequent invidious preference to it in respect to the amount imposed.

The Kentucky Central Railroad Company did not acquire by its purchase at the judicial sale the privilege here claimed, which is in
its nature partial & exclusive, nor does the language used in
83 the act of incorporation, passed in 1871, clearly and in express terms confer it.

For the terms used in that act impart nothing more than the rights, privileges, and immunities usually granted and such as are necessary to the corporate existence & ordinary conduct of the business of railroad companies.

Certainly the language used does not clearly express an intention to grant to the company the extraordinary & exclusive privilege of exemption from conditions and burdens imposed upon railroad companies generally and which are deemed necessary for the support of the Government.

In our opinion, sec. 4 of the act of March 3, 1851, intended alone to regulate the mode of assessing the property of the Covington & Lexington Railroad Company, which no longer exists, is now obsolete, and the Kentucky Central Railroad Company is subject to the general law applicable to other railroad companies in the assessment & collection of taxes, and the lower court consequently erred in fixing the amount of taxes due from it upon the basis of an assessment of stock.

Wherefore the judgment is affirmed on the appeal and reversed

on the cross-appeal of the Commonwealth of Kentucky, and
84 remanded for further proceedings consistent with this opinion.

*Order to Issue Mandate.*

Afterwards, on December 22, 1888, by agreement of parties, it is ordered that the mandate herein be issued forthwith.

*Mo. to File Petition for Rehearing Overruled.*

Afterwards, on January 19th, 1889, the mandate in this case having on the 22 day of December, 1888, been by consent of counsel issued, the right to file a petition for rehearing was thus waived, and the motion to now do so is overruled.

COMMONWEALTH OF KENTUCKY, }
*Court of Appeals.* }

I, Woodford W. Longmoor, clerk of the court of appeals in and for Kentucky, certify the preceding eighty-three pages and this page contain a true, full, and complete copy of the record and proceedings had in said court in the case of Kentucky Central Railroad Company, appellant, against The Commonwealth of Kentucky, appellee, as appears of record and on file in my office.

Seal Kentucky Court of Appeals.

In testimony whereof I have hereunto set my hand and affixed the seal of my said office. Done at Frankfort, Kentucky, this 17th day of November, A. D. 1890.

WOODFORD W. LONGMOOR,
*Clerk of the Kentucky Court of Appeals.*

Fee for this transcript, $26.50.

85 UNITED STATES OF AMERICA, }
*District of Kentucky,* } *sct:*

The President of the United States of America to the judges of the court of appeals of the Commonwealth of Kentucky, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said court of appeals before described, between The Kentucky Central Railroad Company, appellant, and The Commonwealth of Kentucky, appellee, a manifest error hath happened, to the great damage of the said Kentucky Central Railroad Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if the judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the 1st day of the next October term, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the

said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the cir-
86 cuit court, at Frankfort, in said district, this 9 day of December, 1890, and of the Independence of the United States the one hundred*th* and fifteenth.

[Seal 6th Circuit Court, Ky. Dis., U. S. America.]

THOMAS B. FORD,
*Clerk Circuit Court of the United States*
*for the District of Kentucky.*

Service of the above accepted this Dec. 9th, 1890.
P. W. HARDIN,
*Att'y Gen'l of Kentucky.*

[Endorsed:] 1890, Dec'r 9. Filed in clerk's office. Att.: W. W. Longmoor, C. C. A.

87 UNITED STATES OF AMERICA, }
*State of Kentucky.* }

To the Commonwealth of Kentucky:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of appeals of Kentucky, wherein The Kentucky Central Railroad Company is the plaintiff and you are the defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Holt, chief justice of the court of appeals of the Commonwealth of Kentucky, this 9th day of December, in the year of our Lord 1890.

WM. H. HOLT,
*Ch. Justice Court of Appeals of Ky.*

Service of the above accepted this Dec. 9th, 1890.
P. W. HARDIN,
*Att'y General of Kentucky.*

88 UNITED STATES OF AMERICA, }
*State of Kentucky.* }

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WM. H. HOLT,
*Ch. Justice Court of Appeals of Ky.*

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P. W. HARDIN,
*Att'y General of Kentucky.*

Endorsed on cover: Case No. 14439. Kentucky court of appeals. No. 995. The Kentucky Central Railroad Company, plaintiff in error, *vs.* The Commonwealth of Kentucky. Filed December 12, 1890.